

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JACK G. GEIDEL,

Plaintiff,

v.

CIV 02-1480 KBM

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

**MEMORANDUM OPINION AND ORDER**

Pursuant to 28 U.S.C. § 636(c) and FED. R. CIV. P. 73(b), the parties have consented to have me serve as the presiding judge and enter final judgment. This matter is before the court on Defendant's motion to dismiss the action for Plaintiff's failure to exhaust his administrative remedies before the Appeals Council. I find the arguments and authorities cited in Defendant's brief well-taken and incorporate them here by reference. *Doc. 14.*

Plaintiff *pro se* moves to "quash" the motion and argues his is a "special case" that warrants dispensing with the exhaustion requirement. As Defendant observes, however, the circumstances Plaintiff presents do not qualify for an exception. *See Doc. 14 at 6; Doc. 15 at 3-5; Doc. 17 at 3.* Defendant further states that pursuant to its policy, the Appeals Council is treating the filing of this civil action "as a timely filed request for review," but the Appeals Council has not yet rendered its determination. *Doc. 14, Exh. 1; see also Doc. 17 at 1-2.* Thus, federal court review of the ALJ's decision would be premature.

Wherefore,

**IT IS HEREBY ORDERED** that Plaintiff's motion to quash (*Doc. 15*) is DENIED and Defendant's motion to dismiss is GRANTED (*Doc. 14*). This action will be dismissed without prejudice for failure to exhaust by separate order entered concurrently herewith.

  
Karen B. Molzen  
UNITED STATES MAGISTRATE JUDGE  
Presiding by consent.